

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on March 25, 1999 at 8:00 A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Bob DePratu, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Dorothy Eck (D)
Sen. E. P. "Pete" Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis Jr. (R)
Sen. Bill Glaser (R)
Sen. Barry "Spook" Stang (D)

Members Excused: None

Members Absent: None

Staff Present: Sandy Barnes, Committee Secretary
Lee Heiman, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 532, 3/19/1999
Executive Action: SB 532; SB 184

HEARING ON SB 532

Sponsor: SENATOR WALTER McNUTT, SD 50, SIDNEY

Proponents: Ken Redman, West Crane Dairy
William Barr, Richland Economic Development
Bob Gilbert, Montana Dairy Association
Gloria Paladichuk, Richland Economic Development

Opponents: None

Opening Statement by Sponsor:

SEN. WALTER McNUTT, SD 50, Sidney, said that **SB 532** is the result of the request for a committee bill to set aside the business equipment property and livestock taxes for the large dairy operation that is being proposed for eastern Montana. He said Montana is competing with North Dakota on this proposal, and the tax difference on one dairy between the two states is \$115,000 to \$130,000. He said this is a big operation, anticipating three of these large industrial dairies, with 1,000 cows or more each. All of the product from this operation must be shipped out of state in order to qualify for this exemption.

Proponents' Testimony:

Ken Redman, West Crane Dairy, said that this is the dairy that is being considered in this bill. He said that they are in the process of getting ready to go. The financing is in the works, the site is progressing, with plans to start construction later this spring or early summer. They hope to be milking cows by fall. It is projected that in the next 18 to 24 months they will grow to 3,000 cows.

Mr. Redman said the final site selection is being made right now, and taxation is going to have a major impact. Their investors are saying that with over \$100,000 yearly differential in taxes, the site must be located in North Dakota. He said this could be just the beginning. If this proposal gets going, there are other investors considering coming into Montana, also.

Bill Barr, Richland Economic Development, Sidney, said that in terms of economic development, things are declining in eastern Montana, and they are trying to do things which will turn that around. He said this operation could be a very positive thing for the area, with an anticipated 500 jobs resulting in an impact of \$10.4 million, and many other advantages. The only thing that is holding things up is the action of this legislature on this bill.

Bob Gilbert, Montana Dairy Association, said they have taken a look at this project and are in support of this bill to encourage West Crane Dairy to come to Montana. He said this is a well-thought-out plan, and these folks should be given a chance.

Gloria Paladichuk, Richland Economic Development, said that tax incentives do work, and she encouraged the committee to pass **SB 532.**

Opponents' Testimony: None**Questions from Committee Members and Responses:**

SEN. DEPRATU asked if specifying that the product has to be exported from the state, we are allowing enough room to add value to the product before it leaves the state. **SEN. McNUTT** said that the intention of that requirement was to ensure that that product would be exported so that all of the ingredients that come into this whole process were not destined for competition within the state of Montana. He said the group that he has been talking to says that this product will go east. A lot of it will be base product which will go to cheese factories and food companies which are not in Montana. The intent is that when the processing plants come on line, that product also has to be exported.

SEN. DEPRATU said he understood not wanting it to get into the milk pool, but he said he has concerns that it might be a little too tight, to where the cheese products could not be sold in the state, and we do not want to prevent any value added before it does leave the state. **SEN. McNUTT** said it will be several years before a processing plant comes on line. If that gets to be an issue, he imagines that someone will come before the legislature to straighten that situation out. He said initially the plant will not be a cheese factory, it will export a reduced milk product back to other cheese factories.

CHAIRMAN DEVLIN asked if there were plans to use the beet byproduct from the sugar factory for feed in this dairy, and **Mr. Barr** said that a lot of silage that is grown in the area is part of the consideration. **Mr. Redman** said these products are in the diet and will be used. He said this will add value to the rotation crops opposite the sugar beets.

CHAIRMAN DEVLIN asked if they had been assured that the three-phase electricity supply could be available, and **Mr. Redman** said the rural electric association have been on board from the beginning, but the dairy will have generating facilities which can sustain it in an emergency.

SEN. EKEGREN asked if the goal was three dairies, and **SEN. McNUTT** said three or more is the target. **SEN. EKEGREN** asked if these will be owned by the same people, and **SEN. McNUTT** said not necessarily. He said if this one gets going, there are some other investors from out of state who are looking at another one and maybe two. **SEN. EKEGREN** asked if even other businesses with different owners would have to comply with the minimum of 1,000 cows, and **SEN. McNUTT** said that was correct, that is what the law says. **SEN. EKEGREN** said that the bill requires that the product

be shipped out of state, and he wondered what would happen if they were forced because of economics to sell some of their product in Montana. **SEN. McNUTT** said this would not happen. They will not belong to the Montana milk pool, so they cannot market their product in the state.

SEN. BOHLINGER said that the Fiscal Note, under long-range impacts, says that if this is granted, all taxing jurisdictions will forego any tax benefit from this expansion. He said it seems that there is no tax being collected presently because this is a new venture, and if this industry is expanded, there will be more income taxes paid, there will be 500 new jobs for people who are taxpayers and property owners, and he wondered if those should be considered as positive impacts under the fiscal impacts. **SEN. McNUTT** said they should be. He said the first dairy will employ 70 to 80 people, all of whom will drive cars, have children in the schools, will pay income tax, and possibly property tax, so there will be an additional amount of revenue flowing into the city, county and state.

SEN. ECK asked **SEN. McNUTT** to clarify how many employees there will be. She said she had heard 500 jobs and then 70 to 80 jobs. **Mr. Barr** said that when the project is fully implemented, there will be 500 jobs. Initially, there will be 70 jobs.

SEN. ECK then asked about whether schools, hospitals and things of that nature would be able to handle this influx of people. **Mr. Barr** said that they are ready and looking forward to this. He said there will be a need for housing, but there are things in the works that will handle that. He said the infrastructure is there, and there is time to build into this.

SEN. ELLINGSON asked the name of the corporation that is proposing this project. **SEN. McNUTT** said it is presently called the West Crane Dairy. **Mr. Redman** said the corporation is in the process of choosing a name, and a decision should be made by next week. **SEN. ELLINGSON** asked, then, who the principal investor is, and **Mr. Redman** said his name is Mike Dane from Sidney. **SEN. ELLINGSON** asked if it is understood from Mr. Dane that if this tax break is not provided, he will build in North Dakota. **Mr. Redman** said definitely that would happen because he would not have much choice. He and his investors have decided that they want to be in Montana, but Montana has to be competitive, and if we are not, they have no choice. They will have to go to North Dakota.

CHAIRMAN DEVLIN asked if there was a tax on livestock in North Dakota, and **SEN. McNUTT** said there was not, or to business equipment.

SEN. ELLINGSON asked if, supposing the legislature passed this legislation, there was a possibility that Mr. Dane would go to North Dakota and say, "Look what Montana has done, what can you do for me in North Dakota." **SEN. McNUTT** said he knows Mr. Dane very well. He said this is a local group that is putting this together, and he knows they would not do that. Mr. Dane farms in Montana, and he wants to be in Montana. This bill would make that possible.

SEN. ELLINGSON said that if there were 500 jobs, that might draw 1,500 people to the county in terms of extended families, and he asked if there is enough vacancy in the school system to handle that influx, or if not, would schools have enough money coming out of their tax base with this property excluded to cover that.

SEN. McNUTT said that the 500 jobs would be spread over a large area, so they won't all go to one school. He also said in eastern Montana there is such a declining enrollment, they are looking for children. He believes there is room for 500 more children.

SEN. ELLINGSON asked **Mr. Redman** to respond to his concern about a bargaining process between North Dakota and Montana. **Mr. Redman** said that if this bill is passed, it will be located in Montana.

SEN. DEPRATU asked if the Department of Agriculture was in good shape to support this operation in getting off the ground in terms of regulations and financing. **Ralph Peck, Director, Department of Agriculture**, said the Department is working in conjunction with these businessmen, the Department of Commerce, with the Board of Investments to do whatever they can to provide resources that will enable and provide for economic development in Montana.

SEN. DEPRATU asked if, with the information they have in hand at this point, they see any problems in regard to state regulations or anything that the Department is involved with that might involve this project. **Mr. Peck** said they had been working with the Department of Environmental Quality on the siting, and that should move forward. They have been working with the Board of Investments to try to be sure that the financial structure is available to enable success for this proposal. The group is putting together their business plan now, and as that is developed, it will define and outline all of their business operations, which would be needed for financing. He said the Department of Agriculture is very encouraged and optimistic that it can all come together.

CHAIRMAN DEVLIN asked if the Department of Livestock is involved, and **Mr. Peck** said that the Department of Livestock is highly involved with this project.

SEN. ECK asked what advantages the Bank of North Dakota would have over Montana. **SEN. McNUTT** said they have the advantage of size. He said most of the banks in Montana, unless they are in large metropolitan areas which are not inclined to make ag loans, cannot handle this size of loan. He said by their size, they are precluded by law from making them unless they find other participation. The Bank of North Dakota is kind of a small SBA, and they facilitate these loans with the bank as the lead agent. Montana does not have that situation. He said this involves approximately \$10 million.

SEN. ECK asked if this issue had been addressed in the Jobs and Income as far as providing a better situation for Montana investments. **SEN. McNUTT** said he thought there had been a lot of encouragement for the Board of Investments to take a look at this type of investment, and others, and try to expand its capabilities.

SEN. ELLIS asked how close some of these communities were to North Dakota, and **SEN. McNUTT** said Sidney is about seven miles from North Dakota as the crow flies.

CHAIRMAN DEVLIN said there is a tremendous opportunity on the reservation with the water compact, and **SEN. McNUTT** agreed.

Closing by Sponsor:

SEN. McNUTT said that the one thing that needed to be considered is that the dairy industry is in flux right now. Populations are increasing in the east, and dairies are not real friends to the neighborhoods. They are looking for places to go, and they are moving west. As far as competition with North Dakota, he said North Dakota is not competing with us. All of these things are already in their statutes. They do not have these taxes. As far as getting into a bidding war with North Dakota, they have cut these folks no deals. They have told them straight forward, "This is what your tax bill will be in North Dakota," and they have an advantage. This bill simply provides for a level playing field, and he urged do pass.

EXECUTIVE ACTION ON SB 532

Motion: **SEN. GLASER MOVED THAT SB 532 DO PASS.**

Discussion:

SEN. GLASER said these are good people, and this is the right place and the right time, and we should seize the opportunity.

SEN. DEPRATU said that this needs to be done, and it is good business to do it, but he pointed out that this is just one more example of why our business equipment tax should be going to zero for everyone. He said we are fortunate that these folks came to the legislature with the problem and the opportunities in another state, and he worries about the people who move to other states that don't bring it to the legislature's attention.

Vote: Motion carried 9-0.

EXECUTIVE ACTION ON SB 184

CHAIRMAN DEVLIN said some amendments have come forth on **SB 184**. He said when it was amended the last time in order to get a Fiscal Note, some of the per capita fees on livestock got eliminated. He asked **Mr. Heiman** to explain these current amendments.

Mr. Heiman said these are amendments that cover the wheat and barley assessment and the livestock per capitas. He said the bill is aimed at property taxes, and neither one of those two types of things are true property taxes, and they should be eliminated from the bill. He passed out two sets of amendments, one that he created, **EXHIBIT (tas67a01)**, and one that was suggested by the Department of Livestock, **EXHIBIT (tas67a02)**. He said the difference between the two is that the Department, in their amendment no. 2, wanted to eliminate 15-24-206 from the bill, which is part of the per capita and should be included in the amendment.

Mr. Heiman said his amendment deletes through Section 235, and the Department picks up Section 236 in their amendments. He said he did not think Section 236 should be deleted from the bill. It is a property tax for horse shows that is on the taxable value of the counties and probably should remain in the bill.

CHAIRMAN DEVLIN asked about the fees for predator control, and **Mr. Heiman** said that bounty fees are part of what was agreed on. **CHAIRMAN DEVLIN** asked what Section 236 involved, and **Mr. Heiman** said it is a property tax for purebred livestock and livestock sales. On page 141, line 10, it may not exceed .25 mill on the taxable property of the county.

SEN. ELLIS said that both the sections the Department recommended eliminating are larger in number by one than **Mr. Heiman's**, and he wondered if they looked at a different copy of the bill. **Mr. Heiman** said that Section 236 is the one on page 141 that they suggest deleting, and he recommends that it remain in the bill as a true property tax as opposed to a per capita tax on livestock or barley, a type of an assessment, not a property tax. **Mr. Heiman** said he recommended eliminating Sections 229 through 235, and Section 147, which is 15-24-206 and is part of the livestock per capita.

Motion/Vote: **SEN. ELLIS MOVED SB108402.ALH PLUS STRIKING SECTION 147 IN ITS ENTIRETY. Motion carried 9-0.**

Motion: **SEN. STANG MOVED THAT SB 184 DO PASS AS AMENDED.**

Discussion:

SEN. STANG said he had a problem with the phase-in of the taxes and the tax relief to homeowners, but at this point in the session he feels it is important to keep another vehicle alive to do this, so he will support the continuation of the bill through the process.

SEN. GLASER said this has **SB 195** concepts in it, and he supports that.

SEN. ELLIS said that this creates less tax shifting than any of the alternatives that he has seen since **SB 195** and is more likely to be palatable to the taxpayers that are going to see the huge increases in valuations.

SEN. ELLINGSON said he is going to vote against it because he feels the legislature is engaging in a negotiating process to a certain extent with the Supreme Court. The Supreme Court has told the legislature that when the proper case is presented to it, it is going to find all of **SB 195** unconstitutional. He said our Constitution clearly provides that taxes be based on fair market value, and he believed that there is a Constitutional problem with a phase-in, whether it is four years or 50 years.

SEN. ECK said that she remembered Justice McDonough telling the committee years back that a phase-in over a short period of time would be acceptable. She said it is important to take care of **SB 195** before it is thrown back at us, and she felt this bill would do that.

SEN. DEPRATU said this is the proper way to go at this time, and he feels it is good legislation. We should go forward with it.

SEN. GLASER said he thinks that there is a compelling state interest to have short and moderate term stability and predictability in our taxing system on homes, a compelling state interest to do that. That's what he thought two years ago and that is what he thinks today, and even if it is just a little shady as to what they may think about the Constitution, if you have a compelling state interest to do this, then that should reign.

Vote: Motion carried 8-1 with Ellingson voting no (Roll call vote #1).

DISCUSSION ON HB 174 AND SB 85

SEN. ELLIS asked what was going to be done with **SB 85**, and **CHAIRMAN DEVLIN** said that they are still in negotiation. He said he hates to get too hasty with **SB 85** because he feels that the vehicle that should be considered is **HB 174**. **SEN. GLASER** said it is his understanding that if there can be an agreement in the House, then the Senate in their wisdom can handle it appropriately.

SEN. ECK said she would feel more comfortable if the committee were at least working on **SB 85** so that if **HB 174** does not come through, this committee would at least have something viable to pass out. **CHAIRMAN DEVLIN** said it would have to be out of Taxation Committee by tomorrow or Saturday in order to make second and third readings.

SEN. STANG said he agreed with **SEN. ECK** as far as looking at **SB 85** so that we would have at least a vehicle open in this session to deal with that issue. He said it is imperative that this issue be dealt with this session. **SEN. ELLIS** said he agreed that it needs to be resolved this session.

DISCUSSION ON SB 370

CHAIRMAN DEVLIN asked if **SEN. STANG** had anything new on **SB 370**, and he asked if anyone on the committee had changed their minds on the matter. **SEN. GLASER** said he has some ideas in mind, but has not done anything concrete.

FURTHER DISCUSSION ON SB 85

SEN. ECK asked if those that had been on the Revenue Oversight Committee thought **SB 85** is a bill that really works. **CHAIRMAN DEVLIN** said it does not include every phase that has to be considered. **SEN. DEPRATU** said that the transition tax makes some of the companies in Montana noncompetitive, and that was something that needed to be clarified.

CHAIRMAN DEVLIN said that he was going to talk to some of the people involved today and see where we are on this issue.

The committee was provided a copy of an article from the Great Falls Tribune of March 4, 1999, by Mike Dennison,
EXHIBIT (tas67a03) .

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ADJOURNMENT

Adjournment: 9:10 A.M.

SEN. GERRY DEVLIN, Chairman

SANDY BARNES, Secretary

GD/SB

EXHIBIT (tas67aad)